STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Council Bluffs Apartments LLC, Petitioner-Appellant, v. **Pottawattamie County Board of Review,** Respondent-Appellee.	**ORDER** **Docket No. 11-78-0187** **Parcel No. 7544 33 101 001**

On January 30, 2012, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Council Bluffs Apartments LLC, (Council Bluffs) was represented by Deborah A. Davis of Strategic Tax Services, Inc., Chicago, Illinois. The Pottawattamie County Board of Review was represented by Assistant County Attorney Leanne A. Gifford. The Appeal Board having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Council Bluffs is the owner of a commercially classified apartment building located at 20 South 41st Street, Council Bluffs, Iowa. The complex was built in 1987 and 2000 and is comprised of ten, three-story buildings with 168 total units. The original phase, built in 1987, included 96 units. The second phase, built in 2000, included 72 units. It is situated on an 11.76 acre site. All of the buildings were built with similar quality materials and all are rated as normal condition. All units have a private patio or balcony area. There is also a 5388 square-foot clubhouse. The complex includes a 750 square-foot swimming pool with 1500 square feet of concrete patio and a 192 square-foot brick/block pool house. It has 47,500[1] square feet of paving (mix of concrete and asphalt). Additionally, there are garage buildings with a total of 117 stalls. The following chart is a breakdown of the size of the buildings and their units.

	Gross Bldg Area/SF	Total SF	Units/Bldg
Building 1	14,892	14,892	24
Building 2	15,603	15,603	24
Building 3	22,392	22,392	24
Building 4	6816	6816	12
Building 5	9252	9252	12
Building 6[2]	5,388	5,388	N/A
Building 7	8,606	8,606	12
Building 8	10,706	10,706	12
Building 9	10,706	10,706	12
Building 10	21,722	21,722	18
Building 11	21722	21,722	18
	Totals	147,805	168

Council Bluffs protested to the Pottawattamie County Board of Review regarding the 2011 assessment of $8,725,740, which was allocated as follows: $632,500 in land value and $8,093,240 in improvement value. Council Bluffs' claim was based on two grounds: 1) the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a); and 2) the subject property is assessed for more than the value authorized by law under section 441.37(1)(b). It asserted the correct value was $7,425,000, allocated as $550,000 to the land and $6,875,000 to the improvements.

The Board of Review reduced the total assessment to $8,300,000.

Council Bluffs then appealed to this Board reasserting its claims. Although Council Bluffs asserted a claim of inequity, its evidence and testimony at hearing was entirely regarding its claim of over-assessment.

Both Council Bluffs and the Board of Review submitted appraisals in support of their positions.

[1] The property record card indicates 47,500 square-feet of asphalt parking, one of the appraisals in the record indicates approximately 158,000 +/- square-feet of paved parking, concrete walks, and patios; and the second appraisal in the record indicates "adequate surface parking." One appraisal indicates 239 surface parking spaces, while the second appraisal estimated 236 surface parking spaces.
[2] Building 6 is the clubhouse.

Council Bluffs submitted an appraisal competed by David Mark Nelson, an appraisal consultant with Roy R. Fisher, Inc., Davenport, Iowa. Nelson's appraisal of the subject property had an effective date of January 1, 2011. Nelson also testified for Council Bluffs at hearing. Nelson concluded a total value of $7,850,000, including $325,000 for personal property. Nelson's total value opinion of the real property is $7,525,000.

Nelson developed the sales comparison and income approaches to value. He did not develop the cost approach to value.

The sales comparison approach considered eight properties: six were located in Iowa in Council Bluffs, Cedar Rapids, Coralville, and West Des Moines, and two were located in Omaha, Nebraska. The properties sold between December 2009 and November 2010. The sale prices ranged from $4,500,000 to $18,655,000, with a price per unit ranging from $41,006 to $70,841. The average price per unit was roughly $59,000.

After making adjustments to the sales for various elements, the adjusted price per unit ranged from $42,717 to $52,522, with an average of $47,656[3], which Nelson rounded to $47,500. Nelson reconciled the data, stating in his report "only one sale indicated a value below $45,000 per unit, with two sales indicating values above $50,000. This provides strong support for a value between $45,000 and $50,000."

168 units X $47,500 per-unit value = $7,980,000 indicated value

Nelson also considered a price per bedroom and a price per square foot. Both of these analyses resulted in a slightly lower indicated value, which he reconciles and ultimately rounds his value indicated by the price per unit down to $7,950,000.

Nelson developed the income approach to value by two methods: the gross income multiplier method (GIM) and the direct capitalization (direct cap) method.

[3] We note Nelson reports on page 10-C of his report that the average price per unit, after adjustments, is $47,656. However, the opposing page with the comparable grid and adjustments indicates an average price per unit of $47,429; which is the mathematically correct average.

The GIM is a relatively easy method of analysis. A GIM is obtained by dividing the sale price of a property by the annual effective gross income at the time of sale. Nelson developed a GIM from all of the sales he considered in the sales comparison approach, resulting in a GIM range of 5.31 to 8.31. Nelson selected three sales which he believed to have the most similar expense ratios to the subject. Looking at these three sales, the GIM range tightened from 5.31 to 5.71. Nelson states that "with the subject's expense ratio being 10% higher than these sales, this roughly suggests a GIM from 4.31 to 4.71." Considering this range, and also giving most consideration to his Sales 6 and 8, Nelson ultimately selected a GIM of 4.75.

GIM 4.75 X $1,646,053 gross income = $7,818,752 indicated value

Nelson also developed the direct cap method. In short, Nelson determined a loaded capitalization rate of 12.346%. He determined a projected net income of $954,150.

Projected net income $954,150 / 0.12346 cap rate = $7,728,414 indicated value

However, Nelson believes this value is understated because the personal property has not yet been deducted. As a check to his calculations, Nelson assumes a value conclusion of $7,850,000. He then removes personal property, as well as reserves and taxes to conclude a net income of $615,822. He divides this by his overall capitalization rate (OAR) of 7.85%. This results in the following calculation:

Net Income $615,822 / 0.0785 OAR = $7,844,866

Nelson considers this analysis as support for his final value estimate and concludes his income approach to $7,850,000. Nelson's final conclusions are as follows:

Sales Comparison		$7,950,000
Income Approach		
	GIM	$7,820,000
	Direct Capitalization	$7,850,000

Nelson gave most consideration to the income approach, stating in his report that it "is the most important approach in valuing income producing property." He ultimately determined a total market value of $7,850,000, which includes land, improvements, and personal property. Excluding personal property, which he opined as $325,000, his conclusion of the real property value only, as of January 1, 2011, was $7,525,000.

Based on his written report and his testimony, we find Nelson to be a credible and knowledgeable witness.

Dane Anderson a general certified real property appraiser with CBRE, Inc., West Des Moines, Iowa, completed an appraisal for the Board of Review with an effective date of January 1, 2011. Anderson also testified for the Board of Review regarding his appraisal. Anderson concluded a total value of $8,800,000, including $160,000 for personal property. His total value opinion of the real property is $8,640,000.

Anderson developed all three approaches to value.

In the cost approach, Anderson relied on the Marshall Valuation Service (MVS), published by Marshall and Swift, LLC. His replacement cost new, including entrepreneurial profit, was $14,201,000. After depreciation, and considering depreciated personal property and land value, his rounded cost approach value is $9,130,000. We note Anderson considered four land sales and concluded a land value of $1,090,000, compared to the assessed site value of $632,500.

Anderson developed the sales comparison approach to value and considered five improved apartment sales. Three sales were located in Omaha, Nebraska; one in West Des Moines, Iowa; and one in Cedar Rapids, Iowa. With the exception of one property in Omaha, Anderson considered the same properties used by Nelson.

After adjustments for differences, Anderson concluded an indicated value per unit ranging from $54,059 to $63,048. From this, he reconciled a value of $53,988 per unit, or a total value of $9,070,000 (rounded).

Lastly, Anderson developed the income approach to value. He considered six comparable apartments to estimate the market rents, considered the operating history of the subject property, and ultimately determined an effective gross income of $1,660,750. After expenses his net operating income was $1,091,160. He considered a loaded capitalization rate of 12.5%, which resulted in a value indicated by the income approach of $8,730,000, rounded.

Anderson's conclusions are as follows.

Cost Approach	$9,130,000
Sales Comparison	$9,070,000
Income Approach	$8,730,000

Anderson gives all three approaches consideration in his final value opinion, with primary emphasis given to the income approach. His final conclusion of value is $8,800,000, which includes $160,000 in personal property. His opinion of the real property is $8,640,000.

Based on his written report and his testimony, we find Nelson to be a credible and knowledgeable witness.

While we find both appraisers to be credible, we note some areas of dispute between their conclusions, specifically noted in the income approach to value. The difference can be largely attributed to the vacancy/loss/credit and reserves categories. The following chart is a comparison between the two appraisers' figures and the owners actual 2010. The larger discrepancies are highlighted.

	Anderson	Owner Actual 2010	Nelson
Vacancy/Loss/Credit	5%	7.80%	9.68%
Effective Gross Income	$1,660,000	$1,610,000	$1,646,000
Management	4%	5%	5%
Reserves	$250/Unit or $42,000		$450/Unit or $75,600
Total Expenses	$569,950 Including Reserves	$598,815 Before Reserves	$691,903 Including Reserves
Net Operating Income	$1,091,160	$1,011,923 No reserves yet	$954,150

Starting with the vacancy/loss/credit expense, there is a difference of 4.68% between the two appraisers. We find this difference is based on Nelson including a "loss to lease" of 3%. At hearing, Anderson testified he did not believe a loss to lease was applicable in this instance because loss to lease is based on contract versus market rent. And the subject property was receiving market rents. Therefore, loss to lease is not applicable in this instance. We agree. Furthermore, we note Nelson testified that he "found the subject rents to reflect market rents." Therefore, we give more reliance to Anderson's estimate of vacancy/loss/credit.

If Nelson's loss to lease adjustment is removed, his vacancy/credit consideration is roughly \$95,991, compared to Anderson's vacancy/credit consideration of roughly \$83,250. We do not consider this to be a significant difference.

Anderson estimated operating expenses at \$569,590, whereas Nelson estimated operating expenses at \$691,903. Both estimates included reserves for replacements but did not include real estate taxes. In the entirety of the expense analyses, there are numerous minor discrepancies that contribute to this roughly \$122,000 difference; however we note the biggest discrepancy is in the reserves, which accounts for \$33,600 of the difference. Anderson indicated that reserves were estimated "based on market parameters with an indicated range of \$150 to \$300." From this range, he selected \$250. He did not provide any data to support these market parameters. Nelson provided a more detailed analysis of his reserves. However, he indicates the replacement would be significant because of the weighted age; yet earlier he indicated the property was well maintained and in good condition. We believe Anderson is slightly low and Nelson is slightly high in their reserve estimates.

When presented with more than one appraisal, it is typical for this Board to find one more reliable than another. However, in this instance, despite some differences already noted, we find both appraisers values overall are reasonable and supported. As such, we give both appraisals equal consideration. This results in a total indicated value of the subject property, including personal property of \$8,325,000.

Another point of dispute in this appeal is the personal property estimate. Nelson considered an appliance replacement cost of \$2515 (rounded) per unit for kitchen equipment for 168 units resulting in cost of $422,500. He also considered a cost of $1393 (rounded) per unit for laundry equipment, totaling $234,000. Lastly, he added $50,000 for the personal property in the clubhouse. His total cost for personal property was $706,500 before depreciation. On the page opposing page 9 in his report, he estimated the appliances to be depreciated 50-55%, or having a contributory value of $353,250 to $317,925. He essentially takes the mid-range of this depreciation estimate to conclude a depreciated value of the personal property of $325,000. This breaks down to roughly $1935 per unit. We consider this to be at the upper end of the range for an apartment complex of this size.

Anderson estimated $260,000 for the personal property, or roughly $1550 per unit before depreciation. After depreciation, he estimated a cost per unit of $952. His report does not directly specify whether he considered the pool or clubhouse equipment, although his testimony indicated it was included. During his testimony, Anderson indicated he considered personal property to be equipment that would normally be removed such as a refrigerator or washer and dryer. He does not consider personal property things that an owner would typically not remove due to being built in such as an oven, built-in microwave, or dishwasher. Essentially, he categorizes these items the same as he would a furnace or central air, as fixtures. Therefore he doesn't consider it personal property. He is considering the refrigerator, washer/dryer, and all miscellaneous equipment such items needed for the pool deck. Additionally, he states the manager told him that the cost of replacement for personal property was $1220 per unit before depreciation, which is less than his estimate of $1550 per unit. When questioned if he felt this estimate was low, he indicated he did not believe so given the advantages of buying in bulk. While this explains why his estimates are lower than Nelson's, we believe these estimates would set the lower end of the reasonable range. Therefore, we consider the mid-range, or $242,500, of Nelson and Anderson's personal property estimates to be the most reasonable.

Because both appraisals are credible and because we find the personal property estimates to represent the high and low end of reasonable, we find the total value for the real property of the subject to be $8,082,500.

Based on the foregoing, we find sufficient evidence has been provided to demonstrate the subject property is over-assessed.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Both parties provided a complete appraisal of the subject property. Although there are some discrepancies between the two reports, ultimately we find them both to be credible and reliable and give them equal consideration.

We find the preponderance of the evidence supports Council Bluffs's claims of over-assessment.

THE APPEAL BOARD ORDERS the assessment of Council Bluffs Apartments, LLC's property located at 20 South 41st Street, Council Bluffs, Iowa, be modified to a total value of $8,082,500, as of January 1, 2011.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Pottawattamie County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 17 day of April, 2012.

Karen Oberman, Presiding Officer

Richard Stradley, Board Chair

Jacqueline Rypma, Board Member

Cc:

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Certificate of Service
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 4-17, 2012
By: ✓ U.S. Mail ___ FAX
___ Hand Delivered ___ Overnight Courier
___ Certified Mail ___ Other
Signature [signature]